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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**In re: CATHODE RAY TUBE (CRT)  
ANTITRUST LITIGATION**

This Document Relates to:

*Sears, Roebuck and Co. and Kmart Corp. v.  
Technicolor SA*, No. 3:13-cv-05262;

*Sears, Roebuck and Co. and Kmart Corp. v.  
Chunghwa Picture Tubes, Ltd.*, No. 11-cv-  
05514;

*Sharp Electronics Corp., et al. v. Hitachi, Ltd.,  
et al.*, No. 13-cv-01173;

Case No. 07-5944 SC

MDL No. 1917

**JOINT DEFENSE MOTION IN LIMINE  
#10 - NOTICE OF MOTION AND  
MOTION TO EXCLUDE EVIDENCE OF  
ANY ALLEGED CDT PRICE-FIXING  
CONSPIRACY**

**ORAL ARGUMENT REQUESTED**

Date: None set  
Time: 10:00 a.m.  
Place: Courtroom No. 1

Hon. Samuel Conti

1 *Sharp Electronics Corp. v. Koninklijke Philips*  
2 *Elecs., N.V., No. 13-cv-2776 SC;*

3 *Target Corp. v. Chunghwa Picture Tubes, Ltd.,*  
4 *No. 11-cv-05514*

5 *Target Corp. v. Technicolor SA, No. 13-cv-*  
6 *05686.*

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11 **REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**  
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**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that as soon as the matter may be heard, in Courtroom 1, 17th Floor, 450 Golden Gate Avenue, San Francisco, California, before the Honorable Samuel Conti, the undersigned defendants (“Defendants”) will and hereby do move the Court, under Rules 401, 402, 403, and 404(b) of the Federal Rules of Evidence, to exclude Sharp Electronics Corporation and Sharp electronics Manufacturing Company of America, Inc. (collectively, “Sharp”) from introducing any evidence or mention of an alleged color display tube (“CDT”) price-fixing conspiracy for the reasons set forth in the accompanying Memorandum of Points and Authorities.

This motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities in support thereof, the Declaration of Tiffany B. Gelott and related exhibits, the complete files and records in this action, oral argument of counsel, and such other and further matters as this Court may consider.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. STATEMENT OF THE ISSUE**

Whether Sharp should be precluded from introducing any evidence or testimony concerning any alleged CDT price-fixing conspiracy at trial.

**II. INTRODUCTION**

This motion seeks to exclude Sharp from introducing at trial any evidence of alleged anticompetitive conduct relating to CDTs that were incorporated into monitors. In its joint submission with the other Direct Action Plaintiffs (“DAPs”), Sharp designated: (1) exhibits of various meeting minutes concerning alleged misconduct regarding CDTs; and (2) deposition testimony regarding the CDT industry and alleged anticompetitive conduct regarding CDTs. Sharp, however, never purchased CDTs or CDT Products from any Defendant. Thus, any evidence relating to CDTs and any alleged misconduct regarding CDTs is irrelevant to Sharp’s

claims and would mislead the jury, confuse the issues, and foster undue delay.<sup>1</sup> Therefore, the Court should preclude Sharp from introducing any evidence of alleged anticompetitive conduct regarding CDTs under Rules 401, 402, 403, and 404(b).<sup>2</sup>

### III. ARGUMENT

#### A. Any evidence of an alleged CDT price-fixing conspiracy is irrelevant to Sharp's case

Evidence related to an alleged CDT conspiracy is irrelevant to Sharp's claims because Sharp's claims are based *entirely* on its purchase of color picture tubes ("CPTs") that Sharp used to manufacture televisions. "For evidence to be relevant, it must be probative of the proposition it is offered to prove, and . . . the proposition to be proved must be one that is of consequence to the determination of the action." *United States v. Dean*, 980 F.2d 1286, 1288 (9th Cir. 1992) (internal citations and quotations omitted). Sharp solely seeks damages for its CPT purchases.<sup>3</sup> Because alleged misconduct regarding CDTs is not at issue, evidence regarding CDTs does not have "any tendency" to make the existence of an alleged CPT conspiracy or whether Sharp was injured as a result of that alleged conspiracy "more or less probable." Fed. R. Evid. 401. Thus, evidence regarding CDTs should be excluded.

#### B. Admission of evidence regarding an alleged CDT conspiracy would be more prejudicial than probative

Even if evidence relating to the CDT industry had any relevance to the CPT industry (it does not), evidence regarding CDTs should be excluded because "its probative value is substantially outweighed by [the] danger" of "mislead[ing] the jury" and fostering "undue

<sup>1</sup> While this motion focuses on Sharp's claims, this argument applies equally to any other DAPs that only purchased one sort of finished product, such as Target and Kmart, which only purchased CRT televisions.

<sup>2</sup> Sharp should also be precluded from introducing evidence relating to SDI's plea agreement, which only concerns CDTs, for the same reasons.

<sup>3</sup> See Ex. 1, Expert Report of Jerry Hausman, dated April 15, 2014 ("Hausman Report"), at ¶5 [REDACTED]. All exhibits in this motion refer to exhibits to the accompanying Declaration of Tiffany B. Gelott.

1 delay.” Fed. R. Evid. 403. CDTs and CPTs are not interchangeable and they operate in distinct  
 2 and separate markets. Sharp concedes this point: [REDACTED]

3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]”<sup>4</sup> Therefore, the Court should preclude Sharp from offering  
 7 evidence and argument regarding alleged anticompetitive conduct related to products  
 8 unconnected to Sharp’s claims.

9 Any purported value of the CDT evidence also does not outweigh the danger of  
 10 misleading the jury by confusing the issues between the alleged CDT and alleged CPT  
 11 conspiracies. Evidence of alleged misconduct regarding CDTs “may not be admitted to show a  
 12 propensity or proclivity to commit bad acts” and therefore suggest that Defendants behaved  
 13 similarly in the CPT market. *Coursen v. A.H. Robins Co.*, 764 F.2d 1329, 1335 (9th Cir. 1985);  
 14 *see also* Fed. R. Evid. 404(b). Evidence regarding CDTs would likely mislead the jury in its  
 15 evaluation of Defendants’ alleged liability and its determination of Sharp’s purported damages.  
 16 The jury may inflate any damage award by conflating the two alleged conspiracies and any  
 17 imagined harm. *United States v. Dhingra*, 371 F.3d 557, 565-66 (9th Cir. 2004) (internal  
 18 quotations and citations omitted) (“The measure of undue prejudice is whether admission of the  
 19 evidence created an undue tendency to suggest decision on an improper basis, commonly,  
 20 though not necessarily, an emotional one.”).

21 Finally, the introduction of evidence relating to CDTs would waste the time of the jury  
 22 and Court and substantially delay these proceedings. To rebut plaintiffs’ CDT evidence,  
 23 Defendants will have to spend significant time introducing further evidence and calling  
 24

25 <sup>4</sup> Ex. 2, Plaintiffs Sharp Electronics Corporation and Sharp Electronics Manufacturing Company  
 26 of America, Inc.’s First Supp. Resp. and Obj. to Defendants Hitachi Electronic Devices (USA),  
 27 Inc. and Samsung SDI America, Inc.’s First Set of Interrogatories (February 26, 2014), pg. 16,  
 28 Response to Interrogatory No. 12 (emphasis added); *see also* Ex. 1, Hausman Report at ¶12 [REDACTED]

1 additional fact and expert witnesses to isolate and distinguish the distortive evidence relating to  
2 CDTs, a product which Sharp never purchased and which is not relevant to their claim.

3 **IV. CONCLUSION**

4 For these reasons, the Court should grant Defendants' motion and preclude Sharp from  
5 introducing any evidence or testimony regarding any alleged CDT price-fixing conspiracy.

6  
7  
8 Date: February 13, 2015

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